



WISCONSIN LEGISLATIVE COUNCIL

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CLEARINGHOUSE RULE 02-013

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. The proposed rule incorporates a statement after s. NR 811.88 (1) that responds to the requirement of s. 160.19 (2) (b), Stats. However, the department should review the rule and note to determine if it is sufficient to meet the requirement of s. 160.19 (2) (a) and (b), Stats. The statute allows promulgation of a rule that does not maintain compliance with preventive action limits if compliance with the preventive action limits is not technically and economically feasible (see s. 160.19 (2) (a), Stats.), but requires the rule to contain a statement to that effect. Section 160.19 (2), Stats., does not allow a rule to be promulgated if it will not maintain compliance with enforcement standards. Rather, if an enforcement standard is exceeded, the only option is a response under s. 160.25, Stats. The note is unclear, because it refers to “groundwater standards” rather than preventive action limits or enforcement standards.

b. The department should also consider the language in the note to s. NR 811.88 (8) that refers to the exceedance of groundwater standards “at the point of injection and within the displacement zone,” and how this phrase relates to the concept of the point of standards application that is established in ch. 160, Stats., and ch. NR 140, Wis. Adm. Code.

2. Form, Style and Placement in Administrative Code

a. The phrase following “displacement zone” in s. NR 811.88 (3) duplicates language that is included in the definition of “displacement zone,” and should therefore be deleted.

b. The notes to ss. NR 811.88 (3) and 811.89 (2) and (3) should be incorporated into the text of the rule. The term “paragraph” found in the notes should be amended to “subsection” or “section,” as appropriate.

c. In s. NR 811.91 (4) (intro.), the phrase “all of” should be inserted after the word “contain.”

d. In s. NR 811.92 (3) (c), the cross-reference should read “chs. NR 140 and 809.” In sub. (4) (b), the phrase “the well or wells” should be replaced by the phrase “any well.”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The subject of this rule has been referred to elsewhere as “aquifer storage and recovery.” The rule refers to “aquifer storage recovery.” The definition in s. NR 11.02 (4) suggests that the former phrase is more descriptive, because the definition separately identifies the functions of storing and later recovering the water.

b. The definition of “ASR system” in s. NR 811.02 (5) seems to indicate that the entire municipal water system becomes an ASR system when an ASR well is connected to the municipal water system. Is this correct?

c. The definition of “displacement zone” in s. NR 811.02 (13) suggests that the subsurface region is defined as the displacement zone prior to the storage of water. Is this correct, or is the displacement zone any subsurface region that is actually occupied by water that has been placed for storage? On the other hand, s. NR 811.88 (4) suggests that the displacement zone remains after stored water is removed.

d. Section NR 811.02 (15) (c) would be more clear if rewritten to read: “Any excavation, shaft or other opening, similar to a hole described in par. (a) or (b).”

e. “Finished” is used in s. NR 811.02 (28). This word is not defined in any of the drinking water rules or statutes. As used in ch. NR 809, it appears to mean “treated.” If this meaning is correct, the use of “finished” in the definition is redundant.

f. The use of “well” in the definition of “underground injection” in s. NR 811.02 (29) appears to be unnecessary, because a well is included within the definition of “drillhole.” Also, in that definition, the phrase “water system” is vague.

g. Is the reference to “ASR system” in s. NR 811.87 (3) necessary? Is there any way to place treated drinking water underground other than through an aquifer storage well?

h. Section NR 811.90 requires all piping installed in an ASR system to comply with ss. NR 811.34 to 811.38. The definition of “ASR system,” as noted earlier, may refer to the entire municipal water system. Do the requirements of ss. NR 811.34 to 811.38 create requirements that apply to the entire municipal water system?

i. The time limit in s. NR 811.91 (6) and 811.92 (6) is unclear, because “of” does not clearly indicate whether the 180 days is before or after completion of the study or development test. Also, should s. NR 811.91 (6) indicate the required contents of the report?

j. Section NR 811.92 does not appear to contain a provision in which the department may deny approval to continue with ASR system development testing based on the results of the ASR system pilot study.